IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ARTHUR J. CHAMBERS	§
Plaintiff	§
	§
VS.	§ CIVIL ACTION NO. 4:10-cv-2775
	§
EMERITUS CORPORATION	§
Defendant	§ JURY DEMANDED

PLAINTIFF'S MOTION FOR REMAND

The plaintiff, Arthur J. Chambers ("Chambers"), respectfully moves this Honorable Court to remand this case to the 151st Judicial District Court of Harris County, Texas from which it was improvidently removed and respectfully shows the following:

I. STATEMENT OF PROCEEDINGS

- 1. This is a civil case, involving allegations of unlawful employment discrimination under the Texas Commission on Human Rights Act. Prior to its removal, this case had been pending in state court since October 1, 2009.
- 2. On August 4, 2010, the defendant, Emeritus Corporation ("Emeritus"), removed this case from state court.

II. BACKGROUND OF CASE

- 3. In his state court petition, Chambers specifically limited his claim for damages to "...an amount not exceeding \$74,500.00." (See Plaintiff's First Amended Original Petition, p. 4). Also, in his initial pleading, Chambers explicitedly limited his claim for damages to an amount "...not exceeding \$74,500.00." (See Plaintiff's Original Petition With Discovery).
- 4. On July 8, 2010, Chambers was deposed by Emeritus' lawyer. During that deposition, the following exchange occurred:

- Q. Okay. What amount of are you seeking in this lawsuit?
- A. I have no idea. I do know that the six figures that I asked for is more than sufficient because of what all I've had to not only endure, but try to find new jobs, and what I was put through for no reason, and just - I mean, I feel as though I was treated very badly.
 - Q. And when you say –
- A. And unconscionable because you don't just fire somebody that's been doing such a great job.
 - Q. And you say the "six figures" that you asked for?
 - A. Yeah.
 - Q. What was that?
 - A. I asked for \$100,000.00.
 - O. When was that?
 - A. When you laughed at me and said you weren't giving it to me.
 - Q. You're talking about the EEOC meeting?
 - A. Yes.

(See Deposition Transcript of Arthur Chambers, pp.126-127; Exhibit "A" to this Motion For Remand).

5. According to Emeritus, the above deposition testimony serves as the basis for its removal petition. (See Defendant's Notice of Removal, p. 2, ¶ III). With this backdrop in mind, Chambers directs this Court to the following argument and authorities in support of this motion for remand.

III. ARGUMENT AND AUTHORITIES

4. To survive a motion for remand, "the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000." *Gebbia*

v. Wal-Mart Stores, Inc., 233 F.3d 880, 882 (5th Cir. 2000) (citing Luckett v. Delta Airlines, Inc, 171 F.3d 295, 298 (5th Cir. 1999)). "The defendant may prove that amount either by demonstrating that the claims are likely above \$75,000 in sum or value, or by setting forth the facts in controversy that support a finding of the requisite amount." Id. at 882-83 (citing Luckett, 171 F.3d at 298 (additional cites omitted)). Such facts should be set forth either in the removal petition (the preferred method), or by subsequent affidavit. See Grant v. Chevron Phillips Chem. Co., 309 F.3d. 864, 868 (5th Cir. 2002). A plaintiff defeats diversity jurisdiction by showing to a "legal certainty" that the amount in controversy does not exceed \$75,000. Id. at 869 (citing De Aguilar v. Boeing Co., 47 F.3d 1404, 1412 (5th Cir. 1995) (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289, 58 S.Ct. 586 (1938)). Moreover, a plaintiff can establish such "legal certainty" by submitting a "binding stipulation or affidavit" stating that he affirmatively seeks less than the jurisdictional threshold, and further stating that he will not accept an award that exceeds that threshold. See De Aguilar, 47 F. 3d at 1412 (quoting In re Shell Oil Co., 970 F.2d 355, 356 (7th Cir 1992)(per curiam)).

IV. AMOUNT IN CONTROVERSY DOES NOT MEET THRESHOLD

6. In the instant case, Emeritus claims that according to his deposition testimony, "[Chambers] is seeking "six figures"." (See Defendant's Notice of Removal, p. 2, ¶ III). Emeritus' tortured interpretation of Chambers' deposition testimony is shamefully wrong. As is patently clear from the actual questions and answers from his deposition, Chambers was seeking "six figures" at an EEOC meeting between himself and Emeritus' counsel, not in the present lawsuit. (See Chambers Deposition Transcript, pp. 126-126; Exhibit "A"). The operative word is "was". The operative time when

Chambers sought "six figures' was at the EEOC pre-suit mediation. No reasonable interpretation of Chambers' deposition testimony could conclude that Chambers is seeking "six figures" in this present litigation.

7. Another piece of evidence that supports the fact that the amount in controversy in this case is less than \$75,000. is Chambers' deposition testimony that he has "no idea" of what amount of money he seeks from this lawsuit. (See Chambers Deposition Transcript, p. 126; Exhibit "A"). Moreover, Chambers has executed an affidavit stipulating that he affirmatively seeks no more than \$74,500.00 in this case. (See Chambers' Stipulation; Exhibit "B"). Chambers' stipulation is consistent with the amount of damages pled for in his state court petition. (See Plaintiff's First Amended Original Petition, p. 4). Because Chambers has established with legal certainty that the amount in controversy does not exceed \$75,000.00, this Court is compelled to remand this case to state court.

V RELIEF REQUESTED

8. Chambers requests that this Court enter an order remanding this case to the 151st Judicial District Court of Harris County, Texas, and that he be granted such other relief at law and equity as this Court deems just and proper.

Respectfully submitted,

THE WILKINS LAW FIRM, P.C.

Ralphaell V. Wilkins

Attorney-In-Charge

SBN: 21487600

4606 San Jacinto Street

Houston, Texas 77004

(713)660-9200 Telephone

(713) 660-0559 Telecopier

CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1D(1)(2), the undersigned counsel has conferred with counsel for the defendant, Rachel D. Ziolkowski, Esq., by email exchange on August 26, 2010, regarding the filing of this motion for remand, and she is opposed to the filing of the same.

Ralphaell V. Wilkins

CERTIFICATE OF SERVICE

On this 30th day of August 2010, a true and correct copy of this Motion For Remand was served via the U.S. District Court Southern District of Texas' electronic transmission services, if available, or otherwise by U.S. First Class Mail, this 30th day of August 2010 upon counsel of record for Emeritus Corporation, William L. Davis, Esq., Jackson Lewis, L.P., 3811 Turtle Creek Nvd., Suite 500, Dallas, Texas 75219...

Ralphaell V. Wilkins

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ARTHUR J. CHAMBERS	§
Plaintiff	§
	§
VS.	§ CIVIL ACTION NO. 4:10-cv-2775
	§
EMERITUS CORPORATION	§
Defendant	§ JURY DEMANDED

AFFIDAVIT OF RALPHAELL V. WILKINS

BEFORE ME, the undersigned authority, on this date personally appeared Ralphaell V. Wilkins, who upon oath did dispose and state as follows.

"My name is Ralphaell V. Wilkins. I am over eighteen (18) years of age and I am competent to make this affidavit. All of the matters attested to herein are based on my personal knowledge and are true and correct. My personal knowledge is gained from the fact that I am legal counsel and the attorney of record for the plaintiff in the above styled action, Arthur J. Chambers.

Attached hereto as Exhibit "A" is a true and correct copy of an excerpt from the oral deposition transcript of Arthur J. Chambers. Said deposition was taken before a qualified court reporter on July 8, 2010, at my law office. Page 126 through page 127 of Exhibit "A" are accurate, true and correct renditions of the questions and answers provided by Mr. Chambers at his deposition."

Ralphaell V. Wilkins

SWORN AND SUBSCRIBED BEFORE ME on this 34 day of August 2010.

Notary Public of Texas

[SEAL]



Julia A. Maldunado

Print Name

1102-22-2011

Commission Expires

DEPOSITION OF ARTHUR CHAMBERS - 7/8/2010

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	THE WILKINS LAW FIRM, 4606 San Jacinto Street, Houston,	1	11	
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	2,5	try to find new jobs, and what I was put through for no	25	Q. And when was the last time you had an itching

37 (Pages 145 to 146)

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	145	
1	taken, the following includes counsel for all parties	
2	of record:	
3	MR. HOOTIE WILKINS,	
4	ATTORNEY FOR PLAINTIFF. MS. RACHEL D. ZIOLKOWSKI,	
-	ATTORNEY FOR DEFENDANT.	
5	I firsthan contifu that I am maithen account for	
7	I further certify that I am neither counsel for, related to, nor employed by any of the parties or	
8	attorneys in the action in which this proceeding was	
9	taken, and further that I am not financially or	
10	otherwise interested in the outcome of the action.	
11	Further certification requirements pursuant to Rule	
12	203 of TRCP will be certified to after they have	
13 14	occurred.	
15	Certified to by me this of JULY, 2010.	
16		
17	The second secon	
18		
19	Lohang On Marger	
20	TEXAS CSR NO. 7433	
	Expiration Date: 12-31-10	
21	NOTARY PUBLIC IN AND FOR THE	
	STATE OF TEXAS	
22 23	My Commission Expires: 1-08-2012	*
24		
25		

1 2	FURTHER CERTIFICATION UNDER RULE 203 TRCP The original deposition was was not	× *** * * * * * * * * * * * * * * * * *
,	returned to U.S. Legal Support, Inc., on,	
3	2010. If returned, the attached Corrections and Signature	
5	page contains any changes and the reasons therefor;	
"	If returned, the original deposition was delivered	
6 7	to MS. RACHEL D. ZIOLKOWSKI, Custodial Attorney; That \$ is the deposition officer's charges	1 12 S
1	to the Attorney for Defendant, MS. RACHEL D.	
8	ZIOLKOWSKI, Texas Bar No. 24003234, for preparing the original deposition transcript and any copies of	
9	exhibits;	9 8 9
10	That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate	
11	was served on all parties shown herein on and	
12	filed with the Clerk.	
13	Certified to by me this day of, 2010.	
14	2010.	
15	STEPHANIE M. HARPER	
16	TEXAS CSR NO. 7433	
17	Expiration Date: 12-31-10 NOTARY PUBLIC IN AND FOR THE	
18	STATE OF TEXAS	
19	My Commission Expires: 1-08-2012	
20	U.S. Legal Support, Inc. Firm Registration No. 122	
21	363 North Sam Houston Parkway East,	A
22	Suite 900 Houston, Texas 77060	
100000	(713) 653-7100	
23		
25	JOB NO. 94061	I

EXHIBIT "B"

To: THE WILKINS LAW FRIM, P.C.

To: The United States District Court for the Southern District of Texas Houston Division

I will not be seeking any Judgment that exceeds more than \$74,500 from Emeritus Corporation in relation to Civil Action No.4:10-cv-2775.

August 24, 2010

Arthur J. Chambers

IN THIS ZATH DAY OF AUGUST ZOW, APPEARED IN PERSON ARTHUR CHAMBERS, WHUSE STENATURE PREFARE

J. Chambers

NOTARY PUBLIC FOR



IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ARTHUR J. CHAMBERS	§
Plaintiff	§
	§
VS.	§ CIVIL ACTION NO. 4:10-cv-2775
	§
EMERITUS CORPORATION	§
Defendant	§ JURY DEMANDED

ORDER GRANTING REMAND

On this __ day of September, 2010, the Court considered the Motion For Remand filed by the plaintiff, Arthur J. Chambers. After due consideration of said motion, the argument and authorities cited therein, the response filed by the defendant, Emeritus Corporation, the Court Grants the Motion For Remand and Orders that this case be and is HEREBY REMANDED back to the 151st Judicial District Court of Harris County, Texas.

SIGNED thisday of September 2010.		
	JUDGE PRESIDING	